

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,)	Civil Action No. 04-CV-10421-JLT
)	
Plaintiff,)	
)	
v.)	
)	
HEALTHY SOLUTIONS, L.L.C., et al.,)	
)	
Defendants.)	
)	
CAPPSEALS, INC.,)	
)	
Plaintiff-in-Intervention,)	
)	
v.)	
)	
HEALTHY SOLUTIONS, L.L.C., d/b/a)	
DIRECT BUSINESS CONCEPTS; ITV)	
DIRECT, INC.; and DIRECT)	
FULFILLMENT, LLC,)	
)	
Intervenor-Defendants.)	
)	

**PLAINTIFF-IN-INTERVENTION CAPPSEALS INC.'S MEMORANDUM OF
LAW IN SUPPORT OF ITS MOTION TO COMPEL DEFENDANTS
ITV DIRECT, INC. AND DIRECT FULFILLMENT LLC**

EXHIBIT D



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December 13, 2004

VIA FACSIMILE AND US MAIL

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Re: ITV Direct, Inc. v. Healthy Solutions LLC, et al.
Civil Action No. 04-CV-10421-JLT

Counsel:

Pursuant to Judge Tauro's May 24, 2004 discovery order ("Order"), I am writing to request that your clients supplement their damages disclosures in accordance with Local Rule 26.1(B). Specifically, Local Rule 26.1(B) requires that each claimant itemize all economic losses and provide a computation of damages. While both ITV and Healthy Solutions have submitted disclosures, neither of the disclosures provide the requisite specificity with respect to a computation of any damages.

I also write to reiterate my request of July 7, 2004 regarding the accounting report ("Report") which was ordered in the FTC action. As I indicated, it is our position that the report and its supporting documentation falls within the broad scope of the Order, which requires the production of all documents relevant to the disputed facts set forth in the pleadings. For example, the Report was to address such issues as ITV's assets, as well as its revenues, costs, and the flow of monies in connection with the sale of Supreme Greens. ITV's answer to Cappseals complaint, however, denied that it acknowledged receipt of the Supreme Greens shipped by Cappseals and has further denied the facts alleged by Cappseals regarding the breach of contract and reach and apply claims. Therefore, a report which summarizes ITV's assets (including its supply of Supreme Greens) and its revenues from the sale of Supreme Greens is directly relevant to the disputed issues in this case.

I understand that the Court intends to have a status conference the first week of January. To the extent that any of these issues remain unresolved, we intend to bring these issues to the Court's attention at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristin Cataldo".

Kristin Cataldo

cc: Daniel J. Kelly